

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carlo Vescovi	Team: Squad #14	CCRB Case #: 202005168	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/03/2020 8:50 PM	Location of Incident: East 64th Street and 3rd Avenue	Precinct: 19	18 Mo. SOL 12/3/2021	EO SOL 5/4/2022	
Date/Time CV Reported Thu, 07/16/2020 2:19 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 07/16/2020 2:19 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Alberto Espinal	798	938439	CW T TF
2. LSA Regina Otoo	00000	904723	CW T TF
3. DC Michael Pilecki	00000	880208	TRP BUR

Officer(s)	Allegation	Investigator Recommendation
A.DC Michael Pilecki	Abuse: Deputy Chief Michael Pilecki seized § 87(2)(b) property.	
B.DC Michael Pilecki	Abuse: Deputy Chief Michael Pilecki seized an individual's property.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On July 21st, 2020, § 87(2)(b) filed the following complaint directly with the CCRB via telephone.

On June 3rd, 2020, at approximately 8:50pm, § 87(2)(b) attended a Black Lives Matter demonstration that was travelling the Upper East Side of Manhattan. As § 87(2)(b) and members of the demonstration passed East 64th Street and Lexington Avenue in Manhattan, Deputy Chief Michael Pilecki, of the City Wide Traffic Command, ordered Sergeant Alberto Espinal, of the City Wide Traffic Command, to seize the bicycles of § 87(2)(b) and an unidentified individual (**Allegation A, Allegation B: Abuse of Authority**, § 87(2)(g), § 87(2)(g), § 87(4-b)

§ 87(2)(b)
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§ 87(2)(b)
§ 87(2)(b).

No arrests or summonses resulted from this incident.

The investigation obtained cell phone footage from § 87(2)(b) which will be discussed below. Deputy Chief Pilecki was not equipped with a body worn camera at the time of the incident. § 87(2)(g), § 87(4-b)

Findings and Recommendations

Allegation (A) Abuse of Authority: Deputy Chief Michael Pilecki seized § 87(2)(b) property.

Allegation (B) Abuse of Authority: Deputy Chief Michael Pilecki seized an individual's property.

The investigation established the following facts: On June 3rd, 2020, at approximately 8:50pm, § 87(2)(b) attended a Black Lives Matter demonstration that spanned sections of the Upper East Side in Manhattan. It is undisputed that at the approximate location of East 64th Street and 3rd Avenue, Deputy Chief Michael Pilecki gave a command with specific attention to members of the crowd with bicycles. Shortly thereafter, and acting at Deputy Chief Pilecki's instruction, Sgt. Espinal took bicycles from at least two members of the crowd: § 87(2)(b) and an individual who remains unidentified to the investigation.

In his CCRB interview (BR 01), § 87(2)(b) stated that he was standing stationary in the roadway as the group of protestors turned the corner of East 64th Street and began walking south on 3rd Avenue. § 87(2)(b) held his bicycle by the handlebars and looked south, facing away from officers at the rear of the march. From out of his eyeline, an officer identified by the investigation as Sgt. Espinal, approached § 87(2)(b) and grabbed § 87(2)(b) bicycle out of his hands. § 87(2)(b) turned around and observed Sgt. Espinal walking north on 3rd Avenue towards the intersection of East 64th Street with § 87(2)(b) bicycle. § 87(2)(b) asked "Why are you taking my bike?" At this point, § 87(2)(b) took out his cell phone and began recording. § 87(2)(b) approached an officer in a white shirt, identified by the investigation to be Lieutenant Otoo and asked, "Why are you taking my bike?" Lieutenant Otoo responded, "It's the curfew son." After a few seconds, Sgt. Espinal returned to the crowd from the intersection and § 87(2)(b) approached him while filming. From a distance of approximately five feet, § 87(2)(b) asked Sgt. Espinal again why he took § 87(2)(b) bicycle. Sgt. Espinal then approached an unidentified male individual, grabbed the unidentified individual's bicycle and again walked it north, back towards the intersection of East 64th Street and 3rd Avenue. § 87(2)(b) remained on scene for approximately five more minutes, before he felt unsafe and rejoined the crowd of protestors. No officer ever provided § 87(2)(b) with further information, documentation, or instruction on how he could retrieve his bicycle. § 87(2)(b) was not arrested or issued a summons.

§ 87(2)(b) provided the investigation with the cell phone footage he recorded on the night of the incident (BR 02), which is consistent with § 87(2)(b) testimony. It begins with § 87(2)(b) standing at the south side of the intersection at East 64th Street and 3rd Avenue. A crowd of at least fifty protestors can be seen walking past § 87(2)(b) turning right on East 64th and walking south on 3rd Avenue. At 0:30-0:40 on the player timestamp, § 87(2)(b) approaches Lieutenant Otoo, who is standing in the intersection facing north. § 87(2)(b) states, "I actually wanna know why my bike just got took, why'd my bike get taken?" Lieutenant Otoo responds, "There's a curfew son." § 87(2)(b) walks westward towards the sidewalk on Lexington Avenue. At 0:44 on the player timestamp, Sgt. Espinal is captured walking southward from the intersection towards the crowd. § 87(2)(b) approaches and says, "This motherfucker right here - why did you just take my bike?" § 87(2)(b) asks three more times, "Why did you just take my bike?" but Sgt. Espinal does not answer. Sgt. Espinal approaches an unidentified individual leaning against a bicycle, who is facing west on 3rd Avenue. At 0:56 on the player timestamp, Sgt. Espinal grabs the unidentified individual's bicycle and the unidentified individual briefly attempts to hold onto the handlebars before letting go. Sgt. Espinal then walks the bicycle north towards the intersection at East 64th Street, past a line of officers, and the unidentified individual follows behind at distance of approximately five feet. At minute mark 1:15 on the player timestamp, Deputy Chief Pilecki is captured on screen speaking with Lieutenant Otoo as Sgt. Espinal wheels the bicycle past him; the unidentified individual follows closely behind. The footage does not capture what happens with the bicycle after Sgt. Espinal walks away. The footage ends at 1:23.

In his CCRB interview, Deputy Chief Pilecki (BR 03), who acknowledged his presence during this incident, testified that on the night of June 3rd, 2020, he ordered Sgt. Espinal to "take summons enforcement action against some of the bicyclists who were part of the march." Deputy Chief Pilecki could not recall if he gave Sgt. Espinal specific instructions regarding seizing the bicycles, but stated that it would not have been out of the ordinary. Deputy Chief Pilecki expected the bicycles to be taken back to the 19th Precinct Stationhouse to be vouchered, as that was the precinct of occurrence. If protestors with bicycles were issued summonses, as Deputy Chief Pilecki testified he ordered, their bicycles would be processed in one of two ways: released back to the civilians after issuing the summons at the stationhouse or vouchered under the 'arrest evidence' category.

Lieutenant Otoo testified in her CCRB interview (BR 04) that Deputy Chief Pilecki told a group of members of service, including Lieutenant Otoo and Sgt. Espinal, that officers on scene "were going to seize bikes if [cyclists] were being disorderly or...the curfew." Lieutenant Otoo did not know if protestors whose bicycles were seized were meant to be issued summonses or arrested, but acknowledged that the bicyclists were in violation of the city-wide curfew, some of whom were blocking vehicular traffic with their bicycles and riding in the incorrect lane of travel. Lieutenant Otoo did not receive any specific instruction on how exactly to conduct the seizures of the bicycles. Lieutenant Otoo then observed Sgt. Espinal seize at least one bicycle from a male protestor on scene.

Sgt. Espinal testified in his CCRB interview (BR 05) that during the protest, Deputy Chief Pilecki ordered him to "take those bicycles out of here" regarding a group of bicyclists that were standing on the corner of East 64th Street and 3rd Avenue. Sgt. Espinal did not remember interacting with § 87(2)(b) specifically. After Deputy Chief Pilecki issued the order to take bicycles, Sgt. Espinal walked to the closest individual with a bicycle, described as a male, and instructed him to move. The individual did not hear him, and Sgt. Espinal took hold of the bicycle and confiscated it, at which point the individual fled on foot. As such, Sgt. Espinal did not get any contact information from the individual whose bike he had seized. Sgt. Espinal took approximately two to four more bicycles in a similar nature as the first, but no other individuals fled after their bikes were seized. In each of these instances, Sgt. Espinal testified he took the bicycle north on 3rd Avenue towards the intersection of East 64th Street and handed them off to unknown officers who Sgt. Espinal was not able to identify. Though he issued none himself, it was Sgt. Espinal's understanding that all of these individuals were given summonses, with the exception of the first protestor that fled. Sgt. Espinal

testified that vouchers for bicycles seized at this incident location could be found at the precinct of occurrence.

During his CCRB interview, Sgt. Espinal was shown § 87(2)(b) cell phone video. Sgt. Espinal identified himself as the officer seizing an unidentified male individual's bicycle at 0:57 on the player timestamp. Sgt. Espinal testified that he asked this individual to follow him to the police van, and the video captures the individual following Sgt. Espinal for approximately twenty seconds. After arriving at the van, Sgt. Espinal testified that he handed this bicycle to an unidentified officer. Sgt. Espinal did not issue any summonses to this individual himself and did not further follow up with officers regarding the vouchers.

The 19th Precinct summons log (BR 06) showed that at least three individuals were issued summons at the incident time and location. § 87(2)(b) is not among them. These individuals were issued summonses for violating the Mayoral Executive Order regarding the curfew (BR 07-09). However, property voucher requests corresponding to each summons yielded negative results for any vouchered property (BR 10).

Patrol Guide Procedure 218-01 (BR 11) states that all property seized in conjunction with arrest must be vouchered in the proper category and documented via Property Clerk Invoice Worksheet. Absent an arrest, as per Patrol Guide Procedure 218-01 and Patrol Guide Procedure 208-26 (BR 12), property may be held for several other reasons such as investigatory purposes, if ownership cannot be determined, safekeeping, or for forfeiture.

§ 87(2)(g)

Deputy Chief Pilecki testified that he instructed officers, including Sgt. Espinal, only to "take summons enforcement action" against protestors with bicycles and that he did not recall giving further orders regarding the seizure of bicycles. However, Sgt. Espinal and Lieutenant Otoo both testified that Deputy Chief Pilecki issued a command to seize bicycles, telling them to "take those bicycles," and "seize [the] bikes," respectively. As such, the investigation credited Lieutenant Otoo and Sgt. Espinal's testimony that Deputy Chief Pilecki ordered the seizure of bicycles on scene and Deputy Chief Pilecki is thus the subject of these allegations.

According to Sgt. Espinal's testimony, summonses were issued to all protestors whose bicycles were seized, with the exception of one male protestor who ran away before Sgt. Espinal could collect his identifying information. Thus, such bicycles could likely have been vouchered as arrest evidence. However, as confirmed by the 19th Precinct summons log, § 87(2)(b) was not issued any summonses during this incident. Furthermore, § 87(2)(b) cell phone footage depicted his pursuit of Sgt. Espinal after his bike was seized, thus refuting any notion that § 87(2)(b) fled before his information was obtained. § 87(2)(g)

As depicted in § 87(2)(b) cell phone footage, Sgt. Espinal seized an unidentified individual's bicycle. On the basis of § 87(2)(b) cell phone footage, which shows the unidentified individual follow Sgt. Espinal after his bicycle is seized, the investigation determined that this was also not the individual who Sgt. Espinal testified had fled. While the 19th Precinct summons log confirmed that three summonses were issued at the time and location of the incident, subsequent requests for corresponding property vouchers yielded negative results, thus eliminating the possibility that this individual's bicycle was vouchered as arrest evidence. As no property vouchers were prepared in conjunction with any summonses issued on scene, and as no other category of seizure applied to this aspect of the incident, § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first complaint in which § 87(2)(b) has been a victim.
- Deputy Chief Pilecki has been a member of service for 35 years and has been named a subject of 15 CCRB complaints and 28 allegations, of which three were substantiated.
 - 9400368 involved a substantiated allegation of force against Deputy Chief Pilecki. The Board did not make any disciplinary recommendations.
 - 9404810 involved substantiated allegations of force and discourtesy against Deputy Chief Pilecki. The Board did not make any disciplinary recommendations.
 - § 87(2)(g)
- Lieutenant Otoo has been a member of service for 27 years and has been named a subject of one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- Sgt. Espinal has been a member of service for 14 years and has been named a subject of six CCRB complaints and 11 allegations, none of which have been substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation.
- On January 11th, 2021, a Notice of Claim request was sent to the New York City Office of the Comptroller and yielded negative results (BR 15).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 14

Investigator:	<u>C.V.</u>	<u>Inv. Carlo Vescovi</u>	<u>01/27/2020</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Cassandra Fenkel</u>	<u>IM Cassandra Fenkel</u>	<u>01/27/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date